

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 514

BY SENATORS TARR AND PLYMALE

[Introduced January 16, 2020; referred
to the Committee on Economic Development]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §5B-9-1, §5B-9-2, §5B-9-3, §5B-9-4, §5B-9-5, §5B-9-6, §5B-9-7, and §5B-9-
 3 8, all relating to the West Virginia FinTech Regulatory Sandbox Program; defining terms;
 4 establishing requirements for participants to temporarily test innovative financial products
 5 or services on a limited basis without otherwise being licensed or authorized to act under
 6 the laws of the state; establishing scope of the ability to operate without otherwise being
 7 licensed or authorized to act with respect to approved financial products or services;
 8 providing consumer protections; establishing time limitations on the ability to operate
 9 without otherwise being licensed or authorized to act with respect to approved financial
 10 products or services; and providing reporting requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. THE WEST VIRGINIA FINTECH REGULATORY SANDBOX PROGRAM.

§5B-9-1. The West Virginia FinTech Regulatory Sandbox Program.

1 This article shall be known as the West Virginia FinTech Regulatory Sandbox Act.

§5B-9-2. The West Virginia FinTech Regulatory Sandbox Program.

1 As used in this article:

2 “Applicable agency” means a department or agency of the state that by law regulates
 3 certain types of business activity in the state and persons engaged in such business activity,
 4 including the issuance of licenses or other types of authorization, which the department
 5 determines would otherwise regulate a Sandbox Participant.

6 “Applicant” means an individual or entity that is applying to participate in the regulatory
 7 sandbox.

8 “Consumer” means a person that purchases or otherwise enters into a transaction or
 9 agreement to receive an innovative product or service that is being tested by a sandbox
 10 participant.

11 “Development Office” means the West Virginia Development Office.

12 “Distributed ledger” means the use of a digital database containing records of financial
13 transactions, including blockchain technology, which can be simultaneously used and shared
14 within a decentralized, publicly accessible network and can record transactions between two
15 parties in a verifiable and permanent way.

16 “Financial product or service” means:

17 (A) A financial product or financial service that requires state licensure or registration; or

18 (B) A financial product or financial service that includes a business model, delivery
19 mechanism, or element that may require a license or other authorization to act as a financial
20 institution, enterprise, or other entity that is regulated by West Virginia Division of Financial
21 Institutions under chapters 31, 31A, 31B, and 31C of this code or other related provisions; or

22 (C) In consultation with applicable agencies and with written agreement, a product or
23 service that is governed by chapters 32 and 33 of this code.

24 “Innovation” means the use or incorporation of a new or emerging technology or a new
25 use of existing technology, including distributed ledger, to address a problem, provide a benefit,
26 or otherwise offer a product, service, business model, or delivery mechanism that is not known
27 by the Development Office to have a comparable widespread offering in the state.

28 “Innovative product or service” means a financial product or service that includes an
29 innovation.

30 “Regulatory sandbox” means the West Virginia FinTech Regulatory Sandbox program
31 created by this article, which allows a person to temporarily test an innovative product or service
32 on a limited basis without otherwise being licensed or authorized to act under the laws of the
33 state.

34 “Sandbox participant” means a person whose application to participate in the regulatory
35 sandbox is approved in accordance with the provisions of this article.

36 “Test” means to provide an innovative product or service in accordance with the provisions
37 of this chapter.

§5B-9-3. Regulatory Sandbox Program; application requirements.

1 (a) There is created in the Development Office the Regulatory Sandbox Program.

2 (b) In administering the regulatory sandbox, the Development Office:

3 (1) Shall consult with each agency which otherwise may have jurisdiction or authority
4 relating to any activity proposed for the regulatory sandbox for which the applicant is seeking to
5 proceed without authorization or license;

6 (2) Shall establish a program to enable a person to obtain limited access to the market in
7 the state to test an innovative product or service without obtaining a license or other authorization
8 that might otherwise be required; and

9 (3) May enter into agreements with or follow the best practices of the federal Consumer
10 Financial Protection Bureau or other states that are administering similar programs.

11 (c) An applicant for the regulatory sandbox shall provide to the Development Office an
12 application in a form prescribed by the Development Office that:

13 (1) Demonstrates the applicant is subject to the jurisdiction of the state;

14 (2) Demonstrates the applicant has established a physical location in the state, and shall
15 keep all required records, documents, and data relating to any approved testing available for
16 review by the Development Office and any applicable agency with jurisdiction;

17 (3) Contains relevant personal and contact information for the applicant, including legal
18 names, addresses, telephone numbers, email addresses, website addresses, and other
19 information required by the Development Office;

20 (4) Discloses criminal convictions of the applicant or other participating personnel, if any;

21 (5) Demonstrates that the applicant has the necessary personnel, financial and technical
22 expertise, access to capital, and developed plan to test, monitor, and assess the innovative
23 product or service;

24 (6) Contains a description of the innovative product or service to be tested, including
25 statements regarding all of the following:

26 (A) How the innovative product or service is subject to licensing or other authorization
27 requirements outside of the regulatory sandbox;

28 (B) How the innovative product or service would benefit consumers;

29 (C) How the innovative product or service is different from other products or services
30 available in the state;

31 (D) What risks may confront consumers that use or purchase the innovative product or
32 service;

33 (E) How participating in the regulatory sandbox would enable a successful test of the
34 innovative product or service;

35 (F) A description of the proposed testing plan, including estimated time periods for
36 beginning the test, ending the test, and obtaining necessary licensure or authorizations after the
37 testing is complete;

38 (G) A description of how the applicant will perform ongoing duties after the test; and

39 (H) How the applicant will end the test and protect consumers if the test fails; and

40 (7) Provides any other required information as determined by the Development Office.

41 (d) The Development Office may collect an application fee of no greater than \$250 from
42 an applicant that is set in accordance to similar fees charged by other regulatory sandbox
43 programs.

44 (e) An applicant shall file a separate application for each innovative product or service that
45 the applicant wants to test.

46 (f) After an application is filed, the Development Office may seek additional information
47 from the applicant that the Development Office determines is necessary.

48 (g) Subject to subsection (h) of this section, not later than 90 days after the day on which
49 a complete application is received by the Development Office, the Development Office shall
50 inform the applicant as to whether the application is approved for entry into the regulatory
51 sandbox.

52 (h) The Development Office and an applicant may mutually agree to extend the 90-day
53 time period described in subsection (g) of this section, for the Development Office to determine
54 whether an application is approved for entry into the regulatory sandbox.

55 (i)(1) In reviewing an application under this section, the Development Office shall consult
56 with, and get approval from, each applicable agency before admitting an applicant into the
57 regulatory sandbox.

58 (2) The consultation with an applicable agency may include seeking information about
59 whether:

60 (A) The applicable agency has previously issued a license or other authorization to the
61 applicant;

62 (B) The applicable agency has previously investigated, sanctioned, or pursued legal action
63 against the applicant;

64 (C) Whether the applicant could obtain a license or other authorization from the applicable
65 agency after exiting the regulatory sandbox; and

66 (D) Whether certain licensure or other regulations should not be waived even if the
67 applicant is accepted into the regulatory sandbox.

68 (j) In reviewing an application under this section, the Development Office shall consider
69 whether a competitor to the applicant is or has been a sandbox participant and, if so, weigh that
70 as a factor in favor of allowing the applicant to also become a sandbox participant.

71 (k) If the Development Office and each applicable agency approve admitting an applicant
72 into the regulatory sandbox, an applicant may become a sandbox participant.

73 (l)(1) The Development Office may deny any application submitted under this section, for
74 any reason, at the Development Offices' discretion.

75 (2) If the Development Office denies an application submitted under this section, the
76 Development Office shall provide to the applicant a written description of the reasons for the
77 denial as a sandbox participant.

§5B-9-4. Scope of the Regulatory Sandbox.

1 (a) If the Development Office approves an application under §5B-9-3 of this code, the
2 sandbox participant has 24 months after the day on which the application was approved to test
3 the innovative product or service described in the sandbox participants' application.

4 (b) An innovative product or service that is tested within the regulatory sandbox is subject
5 to the following:

6 (1) Consumers shall be residents of the state;

7 (2) The Development Office may, on a case-by-case basis, specify the maximum number
8 of consumers that may transact through or enter into an agreement to use the innovative product
9 or service;

10 (3) For a sandbox participant testing a consumer loan the Development Office may, on a
11 case-by-case basis, specify the maximum amount of an individual loan that may be issued to an
12 individual consumer and the maximum amount of aggregate loans that may be issued to an
13 individual consumer; and

14 (c) For a sandbox participant testing an innovative product or service that would normally
15 require a money transmission license pursuant to this code, the Development Office may, on a
16 case-by-case basis, specify the maximum amount of a single transaction for an individual
17 consumer and the maximum aggregate amount of transactions for an individual consumer.

18 (d) This section does not restrict a sandbox participant who holds a license or other
19 authorization in another jurisdiction from acting in accordance with that license or other
20 authorization.

21 (e) A sandbox participant is deemed to possess an appropriate license under the laws of
22 the state for the purposes of any provision of federal law requiring state licensure or authorization.

23 (f) Except as otherwise provided in this chapter, including in subsections (g) and (h) of this
24 section, a sandbox participant that is testing an innovative product or service is not subject to
25 state laws that regulate financial products or services.

26 (g)(1) The Development Office may only determine that certain state laws that regulate a
27 financial product or service apply to a sandbox participant if the Development Office, at the
28 Development Office's sole discretion, determines that:

29 (A) An applicant's plan to protect consumers will not adequately protect consumers from
30 the harm the state law addresses; and

31 (B) The benefits to consumers of applying the law outweigh the potential benefits to
32 consumers from increased competition, innovation, and consumer access that waiving the law, in
33 conjunction with the applicant's ability to compensate consumers who may be harmed, would
34 provide.

35 (2) If the Development Office determines that certain state laws that regulate a financial
36 product or service apply to a sandbox participant, the Development Office shall notify the sandbox
37 participant of the specific regulatory provisions that apply to the sandbox participant.

38 (h) Notwithstanding any other provision of this chapter, a sandbox participant does not
39 have immunity related to any criminal offense committed during the sandbox participant's
40 participation in the regulatory sandbox.

41 (i) By written notice, the Development Office may end a sandbox participant's participation
42 in the regulatory sandbox at any time and for any reason, including if the Development Office
43 determines a sandbox participant is not operating in good faith to bring an innovative product or
44 service to market.

§5B-9-5. Consumer Protection for Regulatory Sandbox.

1 (a) Before providing an innovative product or service to a consumer, a sandbox participant
2 shall disclose the following to the consumer:

3 (1) The name and contact information of the sandbox participant;

4 (2) That the innovative product or service is authorized pursuant to the regulatory sandbox
5 and, if applicable, that the sandbox participant does not have a license or other authorization to
6 provide a product or service under state laws that regulate products or services outside the

7 regulatory sandbox;

8 (3) That the innovative product or service is undergoing testing and may not function as
9 intended and may expose the customer to financial risk;

10 (4) That the provider of the innovative product or service is not immune from civil liability
11 for any losses or damages caused by the innovative product or service;

12 (5) That the state does not endorse or recommend the innovative product or service;

13 (6) That the innovative product or service is a temporary test that may be discontinued at
14 the end of the testing period;

15 (7) The expected end date of the testing period; and

16 (8) That a consumer may contact the Development Office to file a complaint regarding the
17 innovative product or service being tested and provide the Development Office's telephone
18 number and website address where a complaint may be filed.

19 (b) The disclosures required by subsection (a) of this section, shall be provided to a
20 consumer in a clear and conspicuous form and, for an internet or application-based innovative
21 product or service, a consumer shall acknowledge receipt of the disclosure before a transaction
22 may be completed.

23 (c) The Development Office may require that a sandbox participant make additional
24 disclosures to a consumer.

§5B-9-6. Requirements for Exiting Regulatory Sandbox.

1 (a) At least 30 days before the end of the 24-month regulatory sandbox testing period, a
2 sandbox participant shall:

3 (1) Notify the Development Office that the sandbox participant will exit the regulatory
4 sandbox, discontinue the sandbox participant's test, and will stop offering any innovative product
5 or service in the regulatory sandbox within 60 days after the day on which the 24-month testing
6 period ends; or

7 (2) Seek an extension in accordance with §5B-9-7 of this code.

8 (b) Subject to subsection (c) of this section, if the Development Office does not receive
9 notification as required by subsection (a) of this section, the regulatory sandbox testing period
10 ends at the end of the 24-month testing period and the sandbox participant shall immediately stop
11 offering each innovative product or service being tested.

12 (c) If a test includes offering an innovative product or service that requires ongoing duties,
13 such as servicing a loan, the sandbox participant shall continue to fulfill those duties or arrange
14 for another person to fulfill those duties after the date on which the sandbox participant exits the
15 regulatory sandbox.

§5B-9-7. Regulatory Sandbox Program; extensions.

1 (a) Not later than 30 days before the end of the 24-month regulatory sandbox testing
2 period, a sandbox participant may request an extension of the regulatory sandbox testing period
3 for the purpose of obtaining a license or other authorization required by law.

4 (b) The Development Office shall grant or deny a request for an extension in accordance
5 with subsection (a) of this section, by the end of the 24-month regulatory sandbox testing period.

6 (c) Development Office may grant an extension in accordance with this section for not
7 more than 12 months after the end of the regulatory sandbox testing period.

8 (d) A sandbox participant that obtains an extension in accordance with this section shall
9 provide the Development Office with a written report every three months that provides an update
10 on efforts to obtain a license or other authorization required by law, including any submitted
11 applications for licensure or other authorization, rejected applications, or issued licenses or other
12 authorization.

§5B-9-8. Record keeping and reporting requirements.

1 (a) A sandbox participant shall retain records, documents, and data produced in the
2 ordinary course of business regarding an innovative product or service tested in the regulatory
3 sandbox.

4 (b) If an innovative product or service fails before the end of a testing period, the sandbox

5 participant shall notify the Development Office and report on actions taken by the sandbox
6 participant to ensure consumers have not been harmed as a result of the failure.

7 (c) The Development Office may establish periodic reporting requirements for a sandbox
8 participant.

9 (d) The Development Office may request records, documents, and data from a sandbox
10 participant and, upon the Development Office's request, a sandbox participant shall make such
11 records, documents, and data available for inspection by the Development Office.

12 (e) If the Development Office determines that a sandbox participant has engaged in, is
13 engaging in, or is about to engage in any practice or transaction that is in violation of this chapter
14 or that constitutes a violation of a state or federal criminal law, the Development Office may
15 remove a sandbox participant from the regulatory sandbox.

16 (f) On or before December 1 of each year, the Development Office shall provide an annual
17 written report to the Joint Committee on Government and Finance that provides information
18 regarding each sandbox participant and that provides recommendations regarding the
19 effectiveness of the Regulatory Sandbox Program.

NOTE: The purpose of this bill is to create the West Virginia FinTech Regulatory Sandbox, which enables a participant to obtain limited access to West Virginia's financial services market to test innovative financial products or services prior to obtaining full state licensure or other authorization that otherwise may be required. The bill requires the West Virginia Development Office to be responsible for the admission process and operation of the Sandbox Program, in partnership with the West Virginia Division of Financial Institutions and other appropriate agencies.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.